



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 24 2005

Mr. Michael A. Hardy, Esq.
Scheurer & Hardy, P.C.
1674 Broadway, 7th Floor
New York, NY 10019

RE: MUR 5408
LaVan Hawkins

Dear Mr. Hardy:

On February 10, 2004, the Federal Election Commission notified your client, LaVan Hawkins, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, the Commission, on May 3, 2005, found that there is reason to believe your client, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Please note that Respondents have an obligation to preserve all documents, records and materials relating to the Commission's investigation.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath.

| In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Michael A. Hardy, Esq.
Page 2

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Kathleen Guith, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis

29044232951

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FACTUAL AND LEGAL ANALYSIS

Respondents:

LaVan Hawkins, Wendy Hawkins

MUR: 5408

I. INTRODUCTION

The complaint and amended complaints in this matter allege that Reverend Alfred C. Sharpton and his principal campaign committee, Sharpton 2004 (f/k/a Rev. Al Sharpton Presidential Exploratory Committee) received and failed to report a variety of prohibited and excessive in-kind contributions between 2001 and 2004.¹ After evaluating all available information, the Commission finds reason to believe that LaVan and Wendy Hawkins violated the Federal Election Campaign Act of 1971, as amended ("the Act").

II. BACKGROUND

A. Identities of Respondents and Related Principal Actors

1. *Reverend Alfred C. Sharpton and Sharpton 2004*

Sharpton was a candidate for the Democratic Party's nomination for President of the United States in the 2004 primary election. Sharpton's principal campaign committee is

¹ The events discussed in this Factual and Legal Analysis appear to have occurred after the effective date of BCRA and its corresponding regulations. Therefore, this Report analyzes the relevant portions of the Act and its corresponding regulations, including those amendments implemented by BCRA, Pub. L. No. 107-155, and those regulations promulgated to implement the BCRA amendments.

MUR 5408
Factual and Legal Analysis

1 Sharpston 2004.² Although he has never held public office, Sharpston has been a federal candidate
2 on three prior occasions, having run in New York's Democratic primaries for the United States
3 Senate in 1978, 1992, and 1994. Both prior to and during his presidential candidacy, Sharpston,
4 who has a national reputation as a civil rights activist, served as President of NAN, a non-profit
5 organization he founded.

6 2. *LaVan and Wendy Hawkins*

7 LaVan Hawkins is the owner of Hawkins Food Group, Inc., a Detroit based corporation.
8 In early 2003, Sharpston attended a party at the home of LaVan Hawkins and his wife, Wendy
9 Hawkins, in Atlanta, Georgia that was reportedly a fundraiser for Sharpston's campaign. LaVan
10 and Wendy Hawkins each contributed the maximum \$2,000 to Sharpston in 2003. In addition,
11 Hawkins Food Group, Inc. paid Sharpston a \$25,000 consulting fee in 2003, although the nature
12 of the services provided by Sharpston to the Hawkins Food Group, Inc. is unknown. See Alfred
13 C. Sharpston, Form SF278, Executive Branch Personnel Public Financial Disclosure Report,
14 dated June 30, 2003, Schedule A.

² On April 29, 2003, Sharpston filed a Statement of Candidacy, designating Sharpston 2004 as his principal campaign committee. The committee's then-treasurer also filed the committee's first disclosure reports on that date.

On January 21, 2004, Sharpston and the Committee entered into a Conciliation Agreement with the Commission in MUR 5363 admitting that Sharpston was a candidate at least as early as October 2002, yet failed to file his Statement of Candidacy, an Amended Statement of Organization, and two disclosure reports in a timely manner. See MUR 5363 Conciliation Agreement ¶ V.1-3. MUR 5363 did not take up the issue of whether the committee's reports, once filed, disclosed all expenditures made during the time that Sharpston was "testing the waters" of his candidacy. See MUR 5363, 1st GCR at note 10.

1 **B. The Sharpton Campaign**

2 Sharpton began paving the way for a potential presidential candidacy as early as August
3 2001.³ In February 2002, Sharpton reportedly commenced a "Getting to Know You Tour," and
4 traveled to New Hampshire and Iowa, but Sharpton 2004 reported no disbursements in
5 connection with this trip. Sharpton became a candidate, within the meaning of the Act, no later
6 than October 2002. *See* MUR 5363 Conciliation Agreement ¶ IV.10.

7 It appears that Sharpton traveled extensively during the early days of his campaign,
8 although the Committee reported no expenditures for travel taken during 2002. In early 2003
9 Sharpton traveled to Atlanta, Georgia to attend what was reported to be a lavish fundraiser for his
10 campaign at the home of LaVan and Wendy Hawkins. *See* Kevin Chappell, "How La-Van
11 Hawkins Rose From the Projects to a Private Jet and a Multi-Million-Dollar Empire," *Ebony*,
12 April 2003, p. 42. Sharpton traveled to the party from Detroit with Hawkins in Hawkins' private
13 jet, which he uses to commute between his business in Detroit, and his home in Atlanta.
14 Hawkins Resp. at 2. Sharpton 2004 reported no expenditures or in-kind contributions in
15 connection with this event.

16 **III. ANALYSIS**

17 Complainant's central allegation is that "Sharpton ran an off-the-books campaign in
18 which campaign expenses were paid by parties without the proper disclosure to the Federal
19 Election Commission and at times in apparent violation of campaign contribution limits and the
20 legal restriction against corporate contributions." MUR 5408, Second Am. Compl. at 2. The
21 available information supports the allegation that Sharpton's campaign was subsidized by various

³ On August 20, 2001 Sharpton announced that by November 2001 he would establish a presidential exploratory committee. In December 2001, Sharpton appeared at a conference in Atlanta entitled "The State of the Black World," during which he discussed his presidential aspirations and the formation of an exploratory committee for a possible campaign. Rob Borsellino, *Al Sharpton to Pay Political Visit*, DES MOINES REGISTER, Feb. 25, 2002.

1 unreported and excessive in-kind contributions to Sharpton 2004. Accordingly, as detailed
2 below, the Commission finds reason to believe that LaVan Hawkins and Wendy Hawkins each
3 violated the Act.

4 The complaint alleges that LaVan and Wendy Hawkins held a fundraiser for Sharpton in
5 their Atlanta home in early 2003, but the Committee did not report any expenditures or in-kind
6 contributions related to the event. The complaint specifically notes that Hawkins provided
7 Sharpton with transportation to the event on Hawkins' private jet. Compl. at 3. Mr. and Mrs.
8 Hawkins deny that the party was a Sharpton fundraiser, claiming that the party was held in
9 connection with the NBA All-Star game weekend that was held in Atlanta in 2003. Hawkins'
10 Resp. at 1. Hawkins acknowledges that Sharpton traveled aboard the plane from Detroit to
11 Atlanta to attend the party, but argues that he did not send the plane to Detroit specifically to pick
12 Sharpton up. *Id.* at 2. Rather, he was aboard his jet when it traveled from Detroit to Atlanta that
13 weekend because he regularly commutes from Detroit to his home in Atlanta. *Id.*

14 Pursuant to the Act, and its corresponding regulations, any expenses that the Hawkins
15 incurred for a fundraising dinner held on behalf of Sharpton are in-kind contributions to
16 Sharpton's committee and must be reported on the Sharpton Committee's disclosure reports, and
17 comply with the limitations and prohibitions of the Act. 2 U.S.C. §§ 431(8)(A)(i) and 434(b)(2).
18 Also, if Hawkins provided transportation for Sharpton to attend the event, that would also
19 constitute an in-kind contribution to Sharpton 2004 if Hawkins was not reimbursed for the value
20 of the travel. See 11 C.F.R. § 100.93(a)–(c).

29044232956

1 An *Ebony* magazine article, purportedly based on a first-hand account of the party,
2 provided the following description of the event, "Fresh crab cakes and carved beef tenderloins
3 were washed down by \$200 a bottle Cristal champagne. Hawkins worked the crowd, at times
4 talking business and world politics with guests, at other times, seeming to 'shake down' guests
5 for donations. Sharpton...gave a rousing speech, and guests ponied up their contributions on
6 their way out the door." Kevin Chappell, *How La-Van Hawkins Rose From the Projects to a*
7 *Private Jet and a Multi-Million-Dollar Empire*, EBONY, Apr. 2003, at 42. Furthermore, the
8 complaint points out that \$8,000 in contributions from Hawkins Food Group employees were
9 reported as having been received by Sharpton 2004 around the time of the fundraiser. Compl. at
10 4. Although the timing of the contributions from the Hawkins and the other Hawkins Group
11 employees does not conclusively show that the Hawkins' event was a Sharpton fundraiser, the
12 first hand account of the party contained in the magazine article, in conjunction with the
13 contributions, does provide a basis to investigate whether the party was in fact a fundraiser for
14 Sharpton's campaign.

15 LaVan and Wendy Hawkins each reached their contribution limit to Sharpton 2004 by
16 making separate \$2,000 contributions to Sharpton on March 12, 2003. *See* 2 U.S.C. §
17 441a(a)(1)(A). Although the cost of voluntarily provided invitations, food and beverages are not
18 contributions if they do not exceed \$1,000 with respect to any single election, *see* 11 C.F.R. §
19 100.77, the description of the event suggests that the cost would have far surpassed the \$1,000
20 limit. Furthermore, there is no information to suggest that Sharpton reimbursed Hawkins for the
21 value of the transportation provided to Sharpton for travel to Atlanta for the party that appears to

MUR 5408
Factual and Legal Analysis

1 have been a fundraising dinner for Sharpton's federal candidacy. Whether Mr. Hawkins was
2 already planning to make the plane trip is not relevant, as it is the benefit provided to the
3 Sharpton campaign by not having to pay for Sharpton's travel expenses that results in an in-kind
4 contribution.

5 Based on the foregoing, the Commission finds reason to believe that LaVan Hawkins and
6 Wendy Hawkins violated 2 U.S.C. § 441a(1)(A) by making excessive in-kind contributions to
7 Sharpton 2004 in connection with a fundraising dinner held in their home on behalf of Sharpton.